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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 JONNI ISAAC,

No. CV-09-5071-FVS

11 Plaintiff,

12 vs.

DEFENDANT'S MOTION TO STRIKE
AMENDED COMPLAINT AND FIRST
AMENDED COMPLAINT

13 SUTTELL & ASSOCIATES, PS,

Note on Motion Docket: February 16, 2010
at 6:30 pm - Without Oral Argument

14 Defendant.

15
16 COMES NOW Suttell & Associates, PS, through its attorney Carl E. Hueber, and
17 moves to strike the Amended Complaint and the First Amended Complaint filed by the
18 plaintiff on January 11, 2010 without leave of court. This motion is based upon the
19 appended Affidavit of Carl E. Hueber and the records and files herein.
20

21 DATED this 14th day of January, 2010.

22 s/Carl E. Hueber, WSBA No. 12453
23 WINSTON & CASHATT
24 Attorneys for Defendant

DEFENDANT'S MOTION TO STRIKE
AMENDED COMPLAINT AND FIRST
AMENDED COMPLAINT -- 1

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AFFIDAVIT

STATE OF WASHINGTON)
 : ss.
County of Spokane)

I, CARL E. HUEBER, being first duly sworn on oath, say:

1. I represent Suttell & Associates, PS.

2. This action was commenced on August 10, 2009 by the filing of a Complaint for Violation of Federal Fair Debt Collection Practices Act and Invasion of Privacy. (Document #1)

3. On December 2, 2009, Suttell & Associates filed Defendant's Answer and Affirmative Defenses to Complaint. (Document #8)

4. On January 4, 2010, Suttell & Associates filed Defendant's Motion to Dismiss which has been set without oral argument for February 24, 2010. (Document #13) When filing this motion, Suttell & Associates, PS relied upon matters extraneous to the pleadings for matters of public record and provided to Suttell & Associates, PS by the plaintiff in her initial Rule 26 Initial Disclosures. To the extent that

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1 the filing of these extraneous documents converted the Motion to Dismiss to a Motion for
 2 Summary Judgment, Suttell provided the appropriate notice required for summary
 3 judgment and supplied a LR56.1 Statement of Material Undisputed Facts.

4
 5 5. On January 11, 2010, without leave of the court, plaintiff filed the Amended
 6 Complaint for Violation of Federal Fair Debt Collection Practices Act, Violation of
 7 Revised Code of Washington Chapter 19.16, and Invasion of Privacy. (Document #19)
 8 Plaintiff also filed on that same day the First Amended Complaint for Violation of
 9 Federal Fair Debt Collection Practices Act, Violation of Revised Code of Washington
 10 Chapter 19.16, and Invasion of Privacy. (Docket #20) At no time prior to the filing of
 11 these pleadings was any contact made with me to seek my client's consent to amending
 12 the claim. Had such inquiry been made, we would not have consented as this case was
 13 filed over five months ago and there is a pending dispositive motion before the court.

14
 15
 16 6. Rule of Civil Procedure 15(a) provides:

17 (a) Amendments Before Trial.

18 (1) *Amending as a matter of course.* A party may
 19 amend its pleading once as a matter of course within:

20 (A) 21 days after serving it, or

21 (B) if the pleading is one to which a responsive pleading is
 22 required, 21 days after service of a responsive pleading or
 23 21 days after service of a motion under Rule 12(b), (e), or (f),
 24 whichever is earlier.

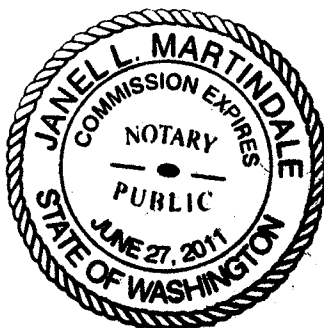
1 7. The plaintiff was not authorized to amend the Complaint as a matter of
 2 course. Suttell & Associates, PS filed its Answer on December 2, 2009. The plaintiff's
 3 filing of the two Amended Complaints on January 11, 2010 was beyond the 21 day
 4 provision of Federal Rule of Civil Procedure 15(a)(1)(B).
 5


6 8. The Federal Rule of Civil Procedure 15(a)(2) provides that in other cases, a
 7 party may amend its pleading only with the opposing party's written consent or the court's
 8 leave. Here, the plaintiff did not obtain Suttell & Associates, PS consent nor was leave of
 9 the court obtained.
 10

11 9. I am asking this court to strike the Amended Complaint and the First
 12 Amended Complaint.
 13

14 
 15 CARL E. HUEBER

16
 17 SUBSCRIBED AND SWORN to before me this 14th day of January, 2010.




 Notary Public in and for the State of
 Washington, residing at Spokane
 My appointment expires: 6/27/2011

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Jon N. Robbins
Weisberg & Meyers
jrobbins@attorneysforconsumers.com

Attorney for Plaintiff

Alex Weisberg
Weisberg & Meyers, LLC
aweisberg@AttorneysForConsumers.com

Attorney for Plaintiff

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